

26-45-104 Restrictions on health insurers.

- (1) Except as provided in Subsection (2), an insurer offering health care insurance as defined in Section 31A-1-301 may not in connection with the offer or renewal of an insurance product or in the determination of premiums, coverage, renewal, cancellation, or any other underwriting decision that pertains directly to the individual or any group of which the individual is a member that purchases insurance jointly:
 - (a) access or otherwise take into consideration private genetic information about an asymptomatic individual;
 - (b) request or require an asymptomatic individual to consent to a release for the purpose of accessing private genetic information about the individual;
 - (c) request or require an asymptomatic individual or his blood relative to submit to a genetic test; and
 - (d) inquire into or otherwise take into consideration the fact that an asymptomatic individual or his blood relative has taken or refused to take a genetic test.
- (2) An insurer offering health care insurance:
 - (a) may request information regarding the necessity of a genetic test, but not the results of the test, if a claim for payment for the test has been made against an individual's health insurance policy;
 - (b) may request that portion of private genetic information that is necessary to determine the insurer's obligation to pay for health care services where:
 - (i) the primary basis for rendering such services to an individual is the result of a genetic test; and
 - (ii) a claim for payment for such services has been made against the individual's health insurance policy;
 - (c) may only store information obtained under this Subsection (2) in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996; and
 - (d) may only use or otherwise disclose the information obtained under this Subsection (2) in connection with a proceeding to determine the obligation of an insurer to pay for a genetic test or health care services, provided that, in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996, the insurer makes a reasonable effort to limit disclosure to the minimum necessary to carry out the purposes of the disclosure.
- (3)
 - (a) An insurer may, to the extent permitted by Subsection (2), seek an order compelling the disclosure of private genetic information held by an individual or third party.
 - (b) An order authorizing the disclosure of private genetic information pursuant to this Subsection (2) shall:
 - (i) limit disclosure to those parts of the record containing information essential to fulfill the objectives of the order;
 - (ii) limit disclosure to those persons whose need for the information is the basis for the order; and
 - (iii) include such other measures as may be necessary to limit disclosure for the protection of the individual.
- (4) Nothing in this section may be construed as restricting the ability of an insurer to use information other than private genetic information to take into account the health status of an individual, group, or population in determining premiums or making other underwriting decisions.
- (5) Nothing in this section may be construed as requiring an insurer to pay for genetic testing.
- (6) Information maintained by an insurer about an individual under this section may be redisclosed:

- (a) to protect the interests of the insurer in detecting, prosecuting, or taking legal action against criminal activity, fraud, material misrepresentations, and material omissions;
- (b) to enable business decisions to be made about the purchase, transfer, merger, reinsurance, or sale of all or part of the insurer's business; and
- (c) to the commissioner of insurance upon formal request.

Enacted by Chapter 120, 2002 General Session